



January 26, 1978

Office of the County Counsel
County of San Luis Obispo
Courthouse Annex, Room 103
San Luis Obispo, CA 93408

Attention: Mr. Bruce M. Cook
Deputy County Counsel

Dear Bruce:

This is in response to your recent request for our opinion on the taxable status of property where construction of a school is in progress in the Templeton Unified School district. There is no doubt that the public school exemption would apply when the facility is complete, and your question pertained only to the time in which the building was under construction.

The taxable status of property eligible for the public school exception determined as of the lien date. The issue seems to be whether the property is exempt for the 1978-79 year if the facilities are not completed by March 1, 1978. As you know, facilities qualifying for the public school exemption do not qualify during the course of construction because Section 5 of Article XIII of the State Constitution does not include the exemption in its list of qualifying exemptions. The cases indicate that for an exemption based solely on use facilities under construction do not come within the definition of incidental use. (See Cedars of Lebanon Hospital v. County of Los Angeles, 35 Cal. 2d 779, and First Baptist Church v. County of Los Angeles, 113 Cal. App. 3d 392.) The only way I could conclude the property is tax-exempt is to try and fit it into another exemption, most probably the welfare exemption.

The only section of the welfare exemption statute that is pertinent is section 231 of the Revenue and Taxation Code. This section allows an exemption for governmental purposes if organized in a qualifying manner. It is not apparent from the information I possess that the organization is qualified under section 231. For example, there is no indicated that there has been a tax letter issued to the organization. Assuming that all of the organizational prerequisites have been satisfied. It is our opinion that section 231 does cover such requirements. A school building can be hit easily within the definition in (d) (1). In subdivision (d) it seq. because the state of California holds title to school district property and, of course, the state is mentioned as one of the specific entities to receive the exemption.

Very truly yours,

Robert D. Milam
Tax Counsel

RDM: fp

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Legal Section